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| OSTROLENK FABER GERB & SOFFEN 1180 AVENUE OF THE AMERICAS NEW YORK, NY 100368403 | | | MEINECKE DIAZ, SUSANNA M | |
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| | | | 3623 | |

DATE MAILED: 04/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/758,509

Applicant(s)

LIDOW, DEREK

Examiner

Susanna M. Diaz

Art Unit

3623

MW

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 and 70-97 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-28 and 70-97 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. This Final Office action is responsive to Applicant's amendment filed December 29, 2003.

Claims 1, 26, and 70 have been amended.

Claims 1-28 and 70-97 are pending.

2. Applicant does not provide a marked-up copy showing the amendments made to the abstract; therefore, the objection to the specification is maintained.

Response to Arguments

3. Applicant's arguments filed December 29, 2003 have been fully considered but they are not persuasive.

Applicant's arguments center around the following assertions:

Applicant respectfully submits that, at best, the Examiner's taking of Official Notice with respect to an independent gatekeeper, such as an office manager (or a contractor), regards procurement of indirect material, unlike the direct material of applicant's claims 70 and 1. Applicant submits that, typically, a purchase order ("PO") for indirect material is submitted by a department in a company. The contents of the PO are analyzed by the office manager to ensure compliance with, for example, a checklist of requirements. Although the office manager may monitor procurement of indirect material, applicant respectfully submits that procurement of direct material, including material that is directly applied to manufactured goods, does not fall within the purview of procurement responsibilities of the office manager.

In the prior art, large original equipment manufacturers ("OEMs") use subcontractors, and smaller OEMs use distributors, to help manage their supply chains

Art Unit: 3623

for direct material acquisition. The supply chain server defined in claims 1 and 70 solves problems associated with prior art supply chains by electronically analyzing customer forecasted demands for direct material to determine whether they are valid, and by sending the forecasted demands to at least one supplier when the forecasted demands are determined to be valid. There is no reason to believe that the office manager (or contractor) to which the Examiner refers would have the data or logistics to receive, analyze and forward customer forecasted demand for direct material procurement in a supply chain, as defined in independent claims 1 and 70. Unlike the supply chain server of claims 1 and 70, the office manager's reaction cycle time cannot meet the demands of a large scale supply chain. (Pages 13-14 of Applicant's response)

As noted in MPEP § 2111, during patent examination, claims are given their broadest reasonable interpretation consistent with the specification. Applicant provides no special definition of "direct material" in the specification or in the claims. Therefore, a "direct material" could be any material ordered directly from a supplier. As such, the fact that an office manager would order office supplies *directly* from a supplier of these office supplies qualifies the office supplies as "direct materials." In other words, the term "direct" is relative in that an order is placed directly (e.g., without an intermediary) from customer to supplier. Even if the supplier does not physically manufacture the ordered supplies, he/she is a direct supplier of the requested ordered supplies. Similarly, if the supplier then proceeds to order a manufacturer to produce the ordered supplies, then the manufacturer is a supplier of "direct material" to the supplier. In other words, every entity that provides a material, raw good, manufactured product, distributed product, etc. serves as a direct supplier of "direct material" to another entity in the supply chain.

Art Unit: 3623

The claimed invention does not provide any explicit definition or special steps particular to a "direct material" as set forth by Applicant's arguments that would be preclude Examiner's interpretation of "direct material" from being a reasonable one. In other words, the same methodology and associated structural elements are not affected by whether or not the material is "direct" or "indirect." Effectively, the adjective "direct" merits little, if any, weight due to this fact. (However, as explained above, the disclosed material is "direct" to at least one entity in the supply chain.)

Furthermore, Applicant has only challenged the applicability of Examiner's statements of Official Notice to Applicant's asserted definition of "direct material." Applicant has not challenged the validity of the actual facts asserted by the statements of Official Notice set forth in the art rejection; therefore, said statements are now submitted to be facts of record.

In conclusion, Applicant's arguments are not persuasive. A revised art rejection, reflecting Applicant's claim amendments, follows.

Specification

4. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

Art Unit: 3623

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

5. The abstract of the disclosure is objected to because it is too long. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1, 5-7, 12-18, 21-28, 70, 74-76, 81-87, and 90-97 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bellini et al. (U.S. Patent No. 5,974,395).

Bellini discloses a system for processing customer forecasted demands, the system comprising:

[Claim 70] a supply chain server coupled to at least one customer and at least one supplier, the supply chain server including a messaging services system and an ERP system (col. 3, lines 53-65; col. 5, lines 60-67; col. 6, lines 41-51; col. 7, lines 18-38); wherein:

the messaging services system receives customer forecasted demands for procurement of direct material from the at least one customer (col. 3, lines 53-65; col. 7, lines 39-50; col. 10, lines 29-54);

Art Unit: 3623

the ERP system analyzes the customer forecasted demands received by the messaging services system to determine whether the customer forecasted demands are valid (col. 7, line 58 through col. 8, line 62 – The supply chain planning engine, which is part of the overall ERP system, accesses information about all enterprises in the supply chain to determine if a “promise” can be made to fulfill the order request, i.e., feasibility of fulfilling the forecasted demands is evaluated); and

the messaging system sends the customer forecasted demands to the at least one supplier when the customer forecasted demands are valid (col. 7, line 58 through col. 8, line 62);

[Claim 74] further comprising a contractual agreement requiring the supplier to follow a production protocol in light of the customer forecasted demands sent by the messaging services system (col. 6, lines 41-51; col. 7, lines 39-50; col. 8, lines 7-61 – A “promise” is interpreted as a type of contractual agreement and it can refer to a promise to supply products, i.e., as part of a production protocol, or parts, i.e., as part of an inventory protocol);

[Claim 75] further comprising a contractual agreement requiring the supplier to follow an inventory protocol in light of the customer forecasted demands sent by the messaging services system (col. 6, lines 41-51; col. 7, lines 39-50; col. 8, lines 7-61 – A “promise” is interpreted as a type of contractual agreement and it can refer to a promise to supply products, i.e., as part of a production protocol, or parts, i.e., as part of an inventory protocol);

Art Unit: 3623

[Claim 76] wherein the messaging services system sends an exception notice to the customer when the ERP system determines that the customer forecasted demands are not valid (col. 8, lines 35-40 – A promise is withdrawn if it is determined that the supply chain network cannot fulfill the requested order);

[Claim 84] wherein the customer forecasted demands relate to products (col. 7, lines 39-50; col. 9, lines 1-8);

[Claim 90] wherein the supply chain server is further connected to at least one logistics provider (col. 7, lines 1-9, 58-64); and

the ERP system further sends a command to the logistics provider so that the logistics provider transfers products corresponding to the forecasted demands from the supplier to the customer in response to orders from the supply chain server (col. 7, lines 1-9, 58-64).

As per claim 70, Bellini does not expressly teach that its supply chain server is an entity independent of the customer and supplier (as asserted by Applicant on page 13 of Applicant's response and further supported by the disclosure in the specification at page 4, line 28 through page 6, line 2). Furthermore, Bellini does not explicitly disclose that its customer forecasted demands are analyzed to determine at least one of compliance with contractual terms, completeness, accuracy, adherence to previous forecasts, adherence to previous buying patterns, and requests within agreed-to-capacities. However, Official Notice is taken that it is old and well-known in the art of procurement to assign an independent gatekeeper to approve requests for supplies from a customer.

Art Unit: 3623

Further, it is old and well-known in the art for such a gatekeeper to approve these requests based on at least one of compliance with contractual terms, completeness, accuracy, adherence to previous forecasts, adherence to previous buying patterns, and requests within agreed-to-capacities. For example, it is common for an employee to place a request for a supply through an independent office manager (such as a contractor). The office manager then determines whether or not the request meets office guidelines (e.g., based on budgetary constraints, approval from proper superiors, properly completed request forms, etc.). This practice provides checks and balances for procurement in order to prevent excessive, unnecessary, and potentially unaffordable ordering of products. Bellini is directed toward facilitating efficient operations throughout a supply chain; therefore, the Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Bellini's invention to incorporate a supply chain server that is an entity independent of the customer and supplier and the ability to analyze customer forecasted demands to determine at least one of compliance with contractual terms, completeness, accuracy, adherence to previous forecasts, adherence to previous buying patterns, and requests within agreed-to-capacities in order to provide checks and balances for procurement in order to prevent excessive, unnecessary, and potentially unaffordable ordering of products.

[Claims 81-83] Bellini's invention provides a data specification format which allows various enterprises to communicate with one another bi-directionally. An electronic

Art Unit: 3623

planning interchange data protocol facilitates the transfer of data among "enterprises running disparate transactional execution systems" (col. 2, line 7 through col. 3, line 28), thereby implying that Bellini can handle data submitted in multiple formats. However, Bellini does not explicitly disclose who determines the format and in what format the forecasted demands are submitted nor if the messaging services system converts the forecasted demands into a different format. Since one of the benefits of Bellini's invention is to be able to handle data submitted in multiple formats, the Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to allow forecasted demands to be in a format determined by the customer (claim 81), e.g., upon submission of forecasted demands by the customer, in order to provide to the customers the convenience of using their preferred internal supply chain system to submit forecasted demands to Bellini's centralized supply chain planning engine. Further, since Bellini's invention converts data to an electronic planning interchange data format, this implies that Bellini's messaging services system does indeed convert the forecasted demands into a different format if the customer does not submit the forecasted demands in the electronic planning interchange data format (as per claim 82). Additionally, regarding claim 83, it should be noted that EDI stands for electronic data interchange. The purpose of EDI is to allow different enterprises with different internal communications protocols and different internal data formats to be able to communicate with one another using a common format, called EDI. Therefore, EDI is functionally equivalent to Bellini's EPI (electronic planning interchange) data protocol as described in col. 3, lines 15-21 of Bellini. Consequently,

Art Unit: 3623

the Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to adapt Bellini's invention to receive forecasted demands in an EDI format in order to make Bellini's invention compatible with a format similar in function to Bellini's EPI, thereby making Bellini more marketable to a wider range of enterprises especially since EDI is a commonly used data format for communications among various enterprises.

[Claims 85-87] Bellini explicitly teaches the forecasting of demands related to products, yet he fails to disclose the forecasting of demands related to services, bandwidth in a network, and airline tickets. However, Official Notice is taken that it is old and well-known in the art of demand management to forecast demands for services, bandwidth in a network, and airline tickets. As with any product, it is essential to forecast demands for services, bandwidth in a network, and airline tickets in order to allow a supplier of such commodities to effectively plan to meet customer demands for each commodity. Therefore, the Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to adapt Bellini to be able to handle forecasted demands related to services (claim 85), bandwidth in a network (claim 86), and airline tickets (claim 87) in order to allow a supplier of such commodities to effectively plan to meet customer demands for each commodity, thereby making Bellini's invention more marketable across a wide range of enterprises.

[Claims 91-92] Bellini does not explicitly teach the use of an extranet manager to provide tracking information relating to products via a web site accessible by the customers and suppliers; however, Official Notice is taken that such an extranet

Art Unit: 3623

manager to provide tracking information relating to products via a web site accessible by the customers and suppliers is old and well-known in the art of supply chain management. Extranets have made the supply chain more fluid by allowing both customers and suppliers to have access to pertinent information from one another's internal system. Also, placing this inter-enterprise information on a web site has made such information more easily and globally accessible to the multiple enterprises involved in the supply chain process. Therefore, the Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to adapt Bellini's supply chain server to include an extranet manager that provides tracking information relating to the products (claim 91) by producing a web site accessible by at least one of the customer and the supplier (claim 92) in order to make the supply chain more fluid by allowing both customers and suppliers to have access to pertinent information from one another's internal system. Also, placing this inter-enterprise information on a web site makes such information more easily and globally accessible to the multiple enterprises involved in the supply chain process.

[Claims 93-94] As per claim 93, Bellini teaches the use of tracking information that includes information regarding the status of the product through potential bottlenecks between the supplier and the customer (col. 6, lines 41-51; col. 9, lines 39-45).

However, Bellini does not teach that said bottlenecks include customs as per claim 94.

Official Notice is taken that it is old and well-known in the art of supply chain management that bottlenecks due to passing items through customs (e.g., when the ordered items are being delivered from another country) are often taken into account

Art Unit: 3623

when assessing an accurate shipment delivery date. Therefore, it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to adapt Bellini to take bottlenecks such as those caused by items passing through customs (claim 94) into account when assessing a shipment delivery date in order to facilitate determination of as accurate as a shipment delivery date as possible when items are being delivered from another country.

[Claims 95-97] As discussed above, Bellini teaches a supply chain server coupled to a logistics provider, a messaging services system, and an ERP system; however, Bellini does not explicitly discuss the details of processing return requests for a particular product to a corresponding supplier. Official Notice is taken that it is old and well-known in the art of supply chain management to enable the processing of return requests for a particular product to a corresponding supplier. Furthermore, Official Notice is taken that it is also old and well-known in the art to provide customers with a desired replacement product, which is either available from suppliers in the system or for which forecasted demands need to be adjusted when the replacement product is not available from the suppliers in the system. These return and replacement policies encourage good relations between suppliers and their customers, especially when suppliers tout a 100% satisfaction guaranteed policy. Therefore, the Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to adapt Bellini to enable the processing of return requests for a particular product to a corresponding supplier as well as providing customers with a desired replacement product, which is either available from suppliers in the system or

Art Unit: 3623

for which forecasted demands need to be adjusted when the replacement product is not available from the suppliers in the system (as per claims 95-97), in order to encourage good relations between suppliers and their customers, especially when suppliers tout a 100% satisfaction guaranteed policy.

[Claims 1, 5-7, 12-18, 21-28] Claims 1, 5-7, 12-18, and 21-28 recite a method with limitations corresponding to those recited in claims 70, 74-76, 81-87, and 90-97; therefore, the same rejection applies.

8. Claims 2-4, 8-11, 19-20, 71-73, 77-80, and 88-89 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bellini et al. (U.S. Patent No. 5,974,395), as applied to claims 1 and 70 above, in view of Landvater (World Class Production and Inventory Management).

[Claims 71-73, 77-80] As discussed above, Bellini's supply chain planning engine receives customer forecasted demands, yet Bellini provides no explicit explanation regarding further analysis of these customer forecasted demands. However, Landvater teaches the importance of optimizing demand management in order to stabilize the overall operations of a supply chain, thereby promoting more smoothly and effectively run operations (page 71). Landvater extrapolates forecasted demands based on expected demand by the customer (see at least page 74), historical data of the forecasted demands (see at least page 75), and information supplied by the customer (see at least page 74). Taking all of these factors into account leads to a more accurate

Art Unit: 3623

forecast of demands; therefore, the Examiner asserts that it would have been obvious to one ordinary skill in the art at the time of Applicant's invention to incorporate with Bellini the extra step of extrapolating customer forecasted demands based on expected demand by the customer (claim 71), historical data of the forecasted demands (claim 72), and/or information supplied by the customer (claim 73), all taught by Landvater, in order to stabilize the overall operations of a supply chain, thereby promoting more smoothly and effectively run operations (as also taught by Landvater).

Further, Landvater promotes obtaining as complete and accurate information as possible when analyzing forecasted demands (see at least pages 70-71, 75) in order to optimize the demand management assessments; therefore, the Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to implement with the modified Bellini a check to determine that all information is complete and accurate as part of the analysis of the forecasted demands (claim 77) in order to optimize the demand management assessments.

Additionally, as per claim 79, while Bellini teaches use of the messaging services system for sending suppliers valid demands (as discussed in the art rejection above), Bellini does not expressly discuss accumulated demands (as per claims 78-80). However, Landvater teaches the accumulation of forecasted demands that relate to demands for a plurality of time periods from a plurality of customers (see at least pages 70, 75-78, 79-80, 85). Again, this contributes to Landvater's teaching of the importance of optimizing demand management in order to stabilize the overall operations of a supply chain, thereby promoting more smoothly and effectively run operations (page

Art Unit: 3623

71). Therefore, the Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to adapt the modified Bellini to collect information regarding the accumulation of customer forecasted demands that relate to demands for a plurality of time periods from a plurality of customers (claims 78-80) to optimize demand management in order to stabilize the overall operations of a supply chain, thereby promoting more smoothly and effectively run operations.

[Claims 88-89] While Bellini does not explicitly teach the cancellation of customer orders related to customer forecasted demands, Landvater discusses this as a common problem in the industry (see at least page 70). Neither Bellini nor Landvater specifically discloses use of an abort code/command to cancel a customer order; however, Official Notice is taken that the use of abort codes and commands to cancel orders are old and well-known in the art. These abort codes and commands often provide a shortcut to identify the details of an order, thereby making it easier and more efficient to quickly cancel a previously placed order. Therefore, the Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to incorporate with the modified Bellini an abort code and command that a customer can use to cancel an order corresponding to one of the customer forecasted demands through Bellini's messaging and ERP systems (as per claims 88 and 89) in order to provide a shortcut to identify the details of an order, thereby making it easier and more efficient to quickly cancel a previously placed order.

[Claims 2-4, 8-11, 19-20] Claims 2-4, 8-11, and 19-20 recite a method with limitations corresponding to those recited in claims 71-73, 77-80, and 88-89; therefore, the same rejection applies.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susanna M. Diaz whose telephone number is (703) 305-1337. The examiner can normally be reached on Monday-Friday, 9 am - 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (703) 305-9643.

Art Unit: 3623

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Receptionist whose telephone number is (703)308-1113.

Any response to this action should be mailed to:


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(703)746-7048 [Informal/Draft communications, labeled
"PROPOSED" or "DRAFT"]

Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive, Arlington, VA, 22202, 7th floor receptionist.


Susanna M. Diaz
Primary Examiner
Art Unit 3623
April 20, 2004